

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KENNETH E VAILL
512 FLIESBACH
SHENANDOAH IA 51601

PELLA CORPORATION
c/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 4326-1160

Appeal Number: 04A-UI-05535-HT
OC: 04/25/04 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Quit

STATEMENT OF THE CASE:

The claimant, Kenneth Vaill, filed an appeal from a decision dated May 10, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 9, 2004. The claimant participated on his own behalf. The employer, Pella, participated by First Shift Human Resources Representative Diane Carpenter and was represented by TALX in the person of Richard Carter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kenneth Vaill was employed by Pella from August 17, 1992 until November 21, 2003. He was a full-time laborer. At the time he was hired the claimant received a copy of the employee handbook. One of the attendance policies is that three consecutive days of no-call/no-show to work will be considered a voluntary quit.

The claimant had been referred to the Employee Assistance Program (EAP) by First Shift Human Resources Representative Diane Carpenter. He had a doctor's excuse to be off work during the week of November 10 through 14, 2003. On Monday and Tuesday, November 17 and 18, 2003, Mr. Vaill or his wife called the employer to report he would be absent. However, he was no-call/no-show to work on November 19, 20, and 21, 2003. Mr. Vaill assumed his EAP counselor was reporting to Pella on his behalf regarding his absence, but the counselor was in fact only reporting that he had attended scheduled sessions.

On November 24, 2003, the claimant talked to Ms. Carpenter by phone, at which time he was notified he was considered a voluntary quit due to being no-call/no-show to work for three days.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4) provides:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was no-call/no-show to work for three consecutive days in violation of a known company rule. His belief that the EAP counselor was reporting on his behalf was incorrect. The counselor was not authorized to act as his agent in this regard, except to report he had attended the scheduled sessions. Under the provisions of the above Administrative Code Section, he is a voluntary quit without good cause attributable to the employer and is disqualified.

DECISION:

The representative's decision of May 10, 2004, reference 01, is affirmed. Kenneth Vaill is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/b